



HILDA CANTÚ MONTÓY
City Attorney

January 11, 2002

MEMORANDUM

TO: Daniel Hobbs, City Manager
Becky Klisch, City Clerk
City Department Heads
Daniel Fitzpatrick, RDA Executive Director
Randy Reed, Public Affairs Officer

RE: Update on Public Records Act

A. New Legislation

The Public Records Act was amended effective January 1, 2002 relating to responses to requests for public records.¹ The City is now required to assist members of the public requesting public records in a specified manner. This new law is intended to further the purpose of the Public Records Act and result in a more efficient use of public resources.

When a member of the public makes a request for a public record, the City is required to assist the member to make a focused and effective request that reasonably describes an identifiable record. To the extent reasonable, the City must assist the member to identify the records and information that is responsive to the request or to the purpose of the request, describe the information technology and physical location in which the records exist, and provide suggestions for overcoming any practical basis for denying access to the records or information sought.

The law only requires that the City make a reasonable effort to elicit additional clarifying information to assist in identifying the records. These additional duties shall not apply if the City makes the requested records available, the City determines the records are expressly exempt from disclosure, or the City makes an index of the records available.

When a request is made for a copy of a public record, the City has ten days to determine whether the request seeks disclosable public records and notify the requestor stating its reasons. The City may, under unusual circumstances, extend the time limit to

¹See AB 1014, amending Gov. Code § 6253, and adding Gov. Code § 6253.1.

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no more than fourteen days by written notice specifying the reason for the extension. If the City determines the request seeks disclosable public records, the City is now required to state the estimated date and time when the records will be made available.

B. Departments are Responsible for Responding to Public Records Act Requests.

We take this opportunity to remind you that the City Departments where the records are located are responsible for responding to requests for public records, not the City Attorney's Office. As we explained in Section 3 of the Municipal Law Handbook located under the staff area of the City of Fresno website, the City Attorney's Office should be consulted to assist City staff whenever: (i) there is a question as to whether a record is exempt from disclosure, (ii) a document is labeled attorney client privilege and (iii) when a record pertains to litigation or threatened litigation.

We have increasingly had requests for public records simply forwarded to our Office or sent to our Office by inter-office mail (snail mail) without any requests for legal services. Apparently, some City Departments mistakenly assume the City Attorney's Office is responsible for all Public Records Act Requests. We have also received requests for assistance on the last day of the 10 day period, or after the 10 day period, to respond to a request for public records. Failure of the City to respond within the 10 day period can be a violation of state law if appropriate steps have not been taken.

To facilitate a more efficient use of the City Attorney's Office and because of the legal requirements as to timely responses, we strongly recommend each department designate a public records lead person. We also ask that City staff contact us immediately by setting up an appointment if assistance is requested from this Office. Contacting us immediately for assistance will also further the purpose of the Public Records Act, which prohibits any delay or obstruction in the release of records, or in notifying the requestor as to whether the request seeks disclosable records. The attorney who handles your department's work should be consulted. If he or she is unavailable, Deputy City Attorney Tei Yukimoto should be consulted. As with all documents we receive, if there is no request for legal services, we assume you are sending a document for "FYI" purposes only.

Finally, we are in the process of developing a Frequently Asked Questions Memorandum regarding the Public Records Act. We will distribute it as soon as it is available.

Respectfully submitted,

HILDA CANTÚ MONTÓY
City Attorney

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